

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8

WSOS COMMUNITY ACTION COMMISSION, INC.

Employer

and

CASE NO. 8-RC-15923

OHIO ASSOCIATION OF PUBLIC SCHOOL  
EMPLOYEES (OAPSE)/AFSCME, LOCAL 4, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>1</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2</sup>

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<sup>1</sup> The parties have filed briefs which have been carefully considered.

<sup>2</sup> During the hearing, the Employer attempted to introduce into evidence Employer Exhibit #31, which consists of a written warning, suspension and notice of discharge issued to a bus driver, Agnes Damon, and signed by lead teacher I, Ruth Nastal. The exhibit was not admitted into evidence due to the omission of the reverse sides of the documents. The Employer's Vice-President of Finance, Barbara Rapp testified that the reverse sides of the documents are only completed when the disciplined employee refuses to sign the disciplinary action form. Rapp opined that since Damon signed the written warning, suspension and notice of discharge forms, the reverse sides of the papers were not completed.

The hearing officer properly rejected Employers' Exhibit #31 and I affirm her ruling. The exclusion of this proffered evidence is warranted under Federal Rules of Evidence 1003 which

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*All full-time and regular part-time acting child care specialists, acting teacher assistants, building and maintenance custodians, bus drivers, center substitutes, child care coordinators, child care specialists, cook I, cook II, cook-janitors, disabilities coordinators, family development specialists, family services coordinators, health coordinators, home base teachers, home visitors, janitors, lead county bus drivers, medical coordinators, nutrition coordinators, teachers, teacher assistants and teacher mentors employed at the Employer's facilities in Seneca, Sandusky, Ottawa and Wood, County, Ohio but excluding all center coordinators, center managers, office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.*

There are approximately 200 employees in the unit found appropriate herein.

The Petitioner seeks to represent a unit of “[a]ll full-time and regular part-time employees of the Employer in the following classifications: acting child care specialist, acting teacher assistant, buildings and maintenance custodian, bus driver, center coordinator, center substitute, child care coordinator, child care specialist, cook I, cook II, cook-janitor, disabilities

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provides that “A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.” Since only part of the documents in issue were reproduced they are inadmissible since the remaining portion of the documents could either

coordinator, family development specialist, family services coordinator, health coordinator, home base teacher, home visitor, janitor, lead county bus driver, lead teacher, medical coordinator, nutrition coordinator, teacher assistant and teacher mentor, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.”<sup>3</sup>

While generally in agreement with the scope of the petitioned-for unit, the Employer contends that the appropriate unit should exclude center coordinators and lead teachers I and II, because they are supervisors within the meaning of Section 2(11) of the Act. The Petitioner asserts that the center coordinators and lead teachers I and II are not supervisors and should be included in the unit found appropriate herein.

## **I. The Facts**

The Employer, WSOS Community Action Commission, Inc., is an Ohio corporation engaged in providing a variety of social services to Northwestern Ohio communities including child development services, family services, housing services, elder programs, community and economic development programs, and environmental programs. The child development

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qualify them or disclose relevant information. **Weinstein’s Federal Evidence, Second Edition, Section 1003-05[3] (1999).**

<sup>3</sup> The petitioned for unit appears as amended at hearing. The parties stipulated that all of the classifications in the petitioned for unit are not professional employees within the meaning of Section 2(12) of the Act. The parties specifically stipulated that the employees in the classifications petitioned for in this petition are not engaged in (A) work predominately intellectual in character; (B) involving the consistent exercise of discretion and judgment in its performance; (C) of such a character that the output produced or the result accomplished could not be standardized in relation to a given period of time; and (D) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning. The parties further stipulated that the employees in the petitioned for unit have not completed courses of specialized intellectual instruction and are not performing related work under the supervision of professional employees to qualify them as professional employees within the meaning of the

department operates a Head Start program and a Public School Preschool Program. The Head Start program is a state and federally funded program that provides educational programs to children ages three and four years old. The basic Head Start program, referred to as the “Center Base” option provides the children with 3½ hour sessions, 128 days per year. Parental involvement is strongly encouraged by enlisting parents to serve on committees to help run the program. The Public School Preschool program is a state funded program, which provides services identical to the Head Start program. The Employer currently provides its services at 21 certified and licensed child care centers throughout Seneca, Sandusky, Ottawa, and Wood counties.<sup>4</sup> Except for the family development center in Bowling Green, Ohio, the services are provided at centers housed on sites owned by other institutions, such as churches and schools.

The Employer employs center coordinators at all but four of its centers. Head teachers work in the Employer’s two family development centers. The staffs at centers headed by center coordinators usually consist of teacher assistants, bus drivers, cooks, center substitutes and janitors. It appears from the record that two teachers and two teacher assistants report to the lead teacher I at the family development center in Bowling Green, Ohio. The record reveals the family development center in Freemont, Ohio employs four teachers, one teacher assistant, two bus drivers and a cook who report to a lead teacher II. The centers vary in size and in the number of employees.

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Act. Based on the foregoing, I accept the stipulation that the employees in the petitioned for unit are not professional employees within the meaning of Section 2(12) of the Act.

<sup>4</sup> At the time of the hearing, the Employer was in the process of opening a center in Bettsville, Ohio. Two of the centers, Bradner and Genoa, do not employ center coordinators, but instead are managed by center managers. At the hearing the parties agreed that center managers would be excluded from the unit. With no record evidence to the contrary I shall accept the parties’ agreement and exclude center managers from the unit.

The center coordinators report to assistant county directors and county directors in each of the four county areas. The county directors report to Assistant Director of Operations, Hortensia Clevenger. The Employer's Child Development Programs Director is Fredericka Larsen. The record reveals that the lead teachers report to the family development center directors.

### **Center Coordinators**

The record reveals that center coordinators spend one day per week handling administrative duties. Another day each week is devoted to planning educational activities for the children in the upcoming week. The remaining three days per week are normally spent teaching.<sup>5</sup> Center coordinators attend agency-wide staff meetings and management meetings including center coordinator monthly meetings. Although the center coordinators are obligated to follow guidelines specifying the amount of time the children should spend in various activities, the center coordinators have discretion in determining the starting and ending times for the programs that they oversee.

The record reveals that the center coordinators have the authority to effectively recommend that individuals be hired or discharged. In this connection, center coordinators are responsible for reviewing applications given to them by the Human Resources Department and selecting individuals from the applications that they wish to interview. A hiring committee consisting of the center coordinator, parents and co-workers who may be familiar with the specific job classification participate on the hiring committee. Although the hiring committee

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<sup>5</sup> In this regard, the following center coordinators testified that their time spent teaching as compared to performing administrative and planning duties is as follows: Jennifer Hahn testified that she spends approximately 75 percent of her time teaching; Cindy Eekel testified that she spends approximately 70-75 percent of her time teaching; and Beth Santus, testified that she spends approximately 70-75 percent of her time teaching.

must reach a consensus as to the individual it will recommend for hire, the decision as to who will be interviewed is within the center coordinators' discretion. Thus, an employee cannot be hired by the Employer unless a center coordinator decides an applicant warrants an interview. The record reveals that when the hiring committee determines the individual that it wishes to recommend for hire, the recommendation is presented to the policy council. The policy council consists of parents from the various centers. It appears from the record that the policy council's review is no more than a formality. There is no indication that the policy council has ever rejected an applicant that the center coordinators have recommended for hire.

The record also reveals that center coordinators have the authority to discharge employees and to make effective recommendations in that regard. Patricia Perkins worked as a center coordinator for the Employer until April of 1999 when she was promoted to a county director position. Perkins testified that as a center coordinator she terminated three employees. Perkins testified that she terminated a teacher's assistant, Melinda Young, on December 2, 1996 as a result of her own decision that the individual's performance was not satisfactory. Perkins also testified she terminated bus driver, Kathy Huffman, on October 23, 1995 for insubordination and unsatisfactory performance of her job duties. Perkins testified that she made the decision to terminate Huffman and only consulted with her county director in order to ascertain the proper procedure for effectuating the discharge. Similarly, Perkins testified that she made a decision to extend the probationary period of an employee, Christian Colvert, a teacher's assistant, when she determined that Colvert's job performance needed improvement. Perkins ultimately decided to terminate Colvert's employment.

The record also includes a Notice of Discharge sheet for an employee named Darlene Johnston that was signed only by center coordinator Debra Bowe. Likewise, a Notice of

Discharge sheet for an employee named Irene Mason was signed only by center coordinator Angela Daughenbaugh. As with hiring, discharge cases are submitted to the policy council for approval. Child Development Director Fredericko Larsen testified that she is not aware of any occasion when the policy council has overruled a discharge determination. Larsen testified that the center coordinators have authority to verbally counsel, issue written warnings, suspend and terminate employees. Center coordinators Jennifer Hahn, Cindy Eekel and Beth Santus all testified, however, that they do not believe they have the authority to issue any discipline beyond verbal counseling an employee and had never issued discipline beyond that level.

The record reveals that the job description for the center coordinator position states that an essential aspect of the job is to supervise the center staff and volunteers which includes hiring, training, evaluating, firing and maintaining personnel files and requested paperwork as directed. With regard to directing the work of the employees at the sites, it appears that the work performed by the staff is routine in nature and does not require the center coordinator to provide detailed direction. However, on the occasions when the center coordinator may be absent from the facility due to meetings or other administrative matters, the center coordinator determines whether a teacher's assistant or a substitute will fill in during her absence. In that instance, the center coordinator determines whether or not a substitute will be called and, if one is required, who the substitute will be.

The record reveals that the Head Start program also provides for home visits for each of the children. The center coordinator determines who will perform the home visit, a teacher's assistant or the center coordinator. If the center coordinator performs the home visit, the center coordinator is again exercising her discretion as to whether or not a substitute should be retained during the period that the home visit is conducted. The record reveals that the center

coordinators are responsible for establishing a list of substitutes when they wish to employ when the need arises. The record also reveals that in addition to the bus driver on each bus, a bus monitor is required. Apparently parents are usually asked to volunteer for this assignment; however, on occasions when parents are not available to do so, the center coordinator must determine who will act as bus monitor. In those instances, the center coordinator may assign a teacher's assistant, a cook or other personnel to perform the job. Center coordinator Cindy Eekel testified that she was told not to put herself on the bus as a bus monitor, but rather to select teaching assistants, because she earns more than the teaching assistants.

Center coordinators Jennifer Hahn and Cindy Eekel both testified that they do have authority to grant personal leave to employees. Both individuals also indicated that the only restriction that they are aware of with respect to their ability to grant personal leave is that it should not be granted for snow days.

The record shows that center coordinators sign the employee time sheets to verify the hours worked. The time sheets reflect personal time taken by employees and overtime hours worked as well as the normal work hours. There is conflicting testimony in the record with regard to whether center coordinators have authority to grant overtime to employees. Child Development Director Fredericko Larson testified that the center coordinators determine the employees work schedules and authorize overtime within the budget that they are given. Center coordinator Jennifer Hahn testified that she was given a verbal warning for granting five hours of overtime to the bus driver. Center coordinator Beth Santus also testified that she was informed at a center coordinator meeting that she should not grant any more overtime. Santus testified that she did not think that she could grant overtime unless she needed to attend a meeting and could not obtain a substitute. In that circumstance, she testified that she would have to contact



the assistant director and inform her of the need for overtime before actually granting it. Center coordinator Cindy Eekel testified that during the center coordinator meetings, center coordinators are informed of various items, one of which may be overtime hours that are available.

The record reveals that the center coordinators complete evaluations for probationary employees and permanent employees employed at their centers. Sandusky County Director Penny Moore testified that the center coordinators do conduct evaluations for the employees at their center, however, the evaluations do not result in raises. Previously, in years past, the evaluations were considered in determining wage increases. Accordingly, Center Coordinator Jennifer Hahn testified that although she performs evaluations, she has been instructed that the evaluations do not determine whether an employee receives a raise. The record revealed that after the evaluations are performed, the evaluations are given to the county directors. It is unclear from the record what effect, if any, the evaluations have on an employee's employment.

### **Lead Teachers**

The job descriptions for the lead teacher I and II positions reveal that the lead teachers are each responsible for the operation of one double session classroom in a family development center. A four year degree is required for the lead teacher I position; and a two year degree is necessary for the lead teacher II position. The Employer asserts that the lead teachers I and II are supervisors as defined in Section 2(11) of the Act. In support of its contention, the Employer produced two evaluations: one signed by a lead teacher I and another signed by a lead teacher II. In addition, the record revealed that Ruth Nastal, lead teacher I and Josephina Simms, a lead teacher II, signed time sheets, including two containing overtime. The Employer maintains that Nastal and Simms authorized the overtime reflected on the time sheets. The record also reveals

that lead teacher and II have signed as supervisor on job descriptions given to new hires to sign. Neither party presented any lead teachers to testify at the hearing.

## **2. Analysis**

Section 2(11) of the Act defines “supervisor” as follows:

“any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

The Board has consistently found that the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status on the employee, provided that the authority is exercised with independent judgment and not in a routine manner. **Pepsi-Cola Company**, 327 NLRB No. 183 (1999); **Providence Hospital**, 320 NLRB 717 (1996); and **Bowne of Houston, Inc.**, 280 NLRB 1222, 1223 (1986). It is also well established that the burden of proving supervisory status rests on the party asserting such status. **Billows Electrical Supply of Northfield, Inc.**, 311 NLRB 878 (1993) and **The Ohio Masonic Home, Inc.**, 295 NLRB 390 (1989).

In applying the traditional criteria for the establishment of supervisory status to the facts of the instant case, I find for the reasons stated below that the center coordinators are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the unit.

The record in this case reveals that center coordinators do have the authority to discharge employees and to make effective recommendations in that regard. The record further reveals that the center coordinators have the authority to discipline employees and to effectively recommend discipline. Although center coordinators Jennifer Hahn, Cindy Eekel and Beth

Santus maintain that they have authority only to counsel employees verbally, the record shows that other center coordinators have effectively recommended the discharge of employees. The determinative factor is that all center coordinators possess the authority to discharge employees; the fact that some have not exercised that authority does not preclude me from finding that the center coordinators are statutory supervisors as defined in Section 2(11) of the Act. **Pepsi-Cola Co., 327 NLRB No. 183 (1999)**. The fact that the discharge decisions are presented to the policy council for final review does not persuade me that the center coordinators do not possess evidence of supervisory status with regard to effectively recommending discharge. There is no evidence in the record that the policy council has ever challenged a decision to discharge an employee, and it appears from the record that the presentation before the policy council is basically a formality.

The record further reveals that the center coordinator is the individual responsible for reviewing applications for position openings and determining which individuals will be interviewed by the committee. In that regard, the center coordinator essentially decides whether or not an employee is eligible for hire by the Employer.

The record also indicates that the center coordinators have authority to grant personal leave time to employees. In addition, to the enumerated powers in Section 2(11) of the Act, the Board may also look to certain other factors as evidence of supervisory status, e.g., authority to grant time off to other employees and attendance at supervisory meetings. See **Flexi-Van Service Center, 228 NLRB 956, 960 (1977)**. The record revealed that center coordinators are free to grant personal leave time for any purpose, except for snow days. There is no requirement that the center coordinators obtain approval from superiors before granting personal leave time. The record also indicates that the center coordinators have attended supervisory meetings during

which proper disciplinary procedures and practices were discussed. These responsibilities support the conclusion that center coordinators are supervisors.

The record also reveals that the center coordinators evaluate employees. However, the evidence in this case indicates that the center coordinators do not effectively recommend retention or termination based on the evaluations, nor is there any evidence that the evaluations are used in determining wage increases. The record revealed that years ago the evaluations were considered in determining raises, but it is apparent from the record that the practice has been discontinued. Critically, there is no evidence in this record as to what weight the evaluations are given. The authority simply to evaluate employees without more is insufficient to establish supervisory status. **Northcrest Nursing Home, 313 NLRB 491, 498 (1993); Passavant Health Care, 284 NLRB 887 (1987).** Therefore, I do not find the fact that the center coordinators conduct evaluations to be evidence of their supervisory status.

Accordingly, based on the foregoing and the record as a whole, I find that the center coordinators are supervisors within the meaning of Section 2(11) of the Act. Thus, I find that the center coordinators are excluded from the unit.

With regard to lead teachers I and II, there is limited evidence in the record with respect to these positions to indicate that lead teachers have the authority to grant overtime to employees. However, based upon review of the records these determinations could be reportorial in nature. In sum, the record does not contain unequivocal evidence to reveal whether or not the lead teachers are supervisors. Since the exclusion of supervisors is a statutory requirement and I cannot make a decision as to the status of lead teachers on this record, I shall permit the lead teachers I and II to vote subject to challenge.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Ohio Association of Public School Employees (OAPSE)/AFSCME, Local 4, AFL-CIO.**

#### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days

from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).**

The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by **September 7, 1999**.

Dated at Cleveland, Ohio this 23rd day of August 1999.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

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